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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

WILL PRYOR, Plaintiff and Appellant, v. NELSON SHELTON & ASSOCIATES, Defendant and Respondent.	B293071 (Los Angeles County Super. Ct. No. SC114123)

APPEAL from an order of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Will Pryor, self-represented, for Plaintiff and Appellant.

No appearance by Respondent.

Plaintiff Will Pryor appeals from an adverse judgment in an action for fraud against his former real estate broker. He argues that, because defendant did not appear at trial, the trial court erred in finding plaintiff had not proved causation. He also argues the court erred in finding he waived his right to a jury trial, and in admitting defendant's evidence. We conclude plaintiff has not shown error, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 14, 2011, plaintiff filed this action against Nelson Shelton & Associates, a licensed real estate broker. In the operative second amended complaint, he alleged defendant committed fraud by failing to disclose that it had terminated one of its real estate agents, Ronald Nelson (Nelson), for misrepresenting to clients that he was the owner of defendant. Plaintiff alleged that after the termination, he contracted to sell his property to Nelson who then deposited forged checks into escrow, moved into the property without permission, and vandalized the property, causing substantial damage.

Defendant successfully demurred to the complaint on statute of limitations grounds, and we reversed. (See *Pryor v. Nelson Shelton & Assocs.* (Nov. 8, 2013, B243989 [nonpub. opn.]). Defendant then unsuccessfully moved for summary judgment. Prior to trial, defendant filed a notice stating it would not appear. Defendant had filed for bankruptcy, no creditor had filed a claim against it, and the bankruptcy case had been dismissed with a finding that defendant had no assets. The trial proceeded without defendant, and plaintiff presented his own testimony and documentary evidence in a court trial.

Based on plaintiff's evidence, the court found as follows: Defendant was plaintiff's real estate broker up until

September 23, 2005 and acted through its agent Nelson to sell plaintiff's property. Defendant learned sometime prior to plaintiff's termination of the listing agreement that Nelson had been falsely representing himself as one of the owners of defendant to some of his clients. Despite such knowledge and its fiduciary obligation to plaintiff, defendant took no action to inform plaintiff of Nelson's misrepresentations or inquire of plaintiff whether he had been similarly misinformed.

The facts of this case sail on a 15-year odyssey. On September 23, 2005, plaintiff cancelled his listing agreement with defendant. Plaintiff thereafter listed his property for sale with Nelson. After plaintiff was unable to sell his property, plaintiff agreed to sell the property to Nelson. Nelson moved into the property and presented plaintiff with a series of forged checks. Plaintiff filed an unlawful detainer action to remove Nelson from the property. When plaintiff finally regained possession of the property, he discovered it had been vandalized and appliances removed from it. According to the complaint, the property was foreclosed in 2010, and plaintiff filed this complaint in 2011. The first appeal from the sustaining of the demurrer then added to the delay. Prior to trial, Nelson was prosecuted and convicted of forgery. The criminal court ordered him to pay $388,000 of restitution to plaintiff, but plaintiff was unable to collect more than $300 of this amount.[1]

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[1] Our opinion is not intended to affect other remedies plaintiff may have that are based on the restitution order in defendant's criminal case. (See Pen. Code, §§ 1202.4, subd. (i) & 1214, subd. (b); *Harris v. Appellate Division of Superior Court* (2017) 14 Cal.App.5th 142, 153 ["An order to pay restitution is deemed a money judgment and enforceable as if it were a civil judgment."].)

In the civil action, plaintiff sought almost $400,000 in damages from defendant under the theory that if defendant had disclosed it had fired Nelson for fraudulent acts, plaintiff would not have continued doing business with him. However, the trial court found that defendant's conduct was not a substantial factor in causing plaintiff's harm: the damages sustained by plaintiff were "too attenuated from defendant's failure to inquire of and advise plaintiff of any misrepresentation Mr. Nelson may have made to plaintiff about his ownership interest in defendant. . . . Plaintiff's damages stem from his decision to enter into a real estate purchase agreement with Mr. Nelson . . . eight months after he terminated his relationship with defendant. Mr. Nelson's criminal activity – forgery, theft and vandalism – is not related to Mr. Nelson's claim he was an owner of defendant."

Judgment was entered for defendant.

DISCUSSION

Plaintiff pursues three principal arguments on appeal: the trial court erred in (1) concluding that plaintiff's damages were not caused by defendant's conduct, (2) finding plaintiff had waived his right to a jury trial, and (3) admitting defendant's evidence at trial.[2] Defendant did not file a respondent's brief on appeal. We conclude plaintiff has not met his burden of showing error.

Causation. Plaintiff first argues the court erred in finding "no proximate causal connection, because the defendant failed to defend the case." Even though defendant did not appear at trial,

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[2] This last argument appears at odds with the uncontroverted fact that defendant did not appear at trial. We try to reconcile this inconsistency in our discussion that follows.

plaintiff still bore the burden of proof as to each element of his cause of action. (See Evid. Code, § 500.) The trial court concluded that plaintiff had failed to meet his burden on causation because his damages — from forgery, vandalism and theft, and failure to sell the property to another buyer—were not caused by defendant's failure to disclose that Nelson had been fired for misrepresenting his position within the company. While plaintiff argues the undisputed evidence showed defendant took no action to inform him of Nelson's misrepresentations in the summer of 2005, it does not follow that this nondisclosure was a substantial factor in causing Nelson's fraud upon plaintiff the following year. He has not shown that the trial court finding is not supported by substantial evidence.

Also as part of his causation argument, plaintiff contends the trial court failed to follow the law of the case, citing to our prior opinion reversing the trial court's sustaining of defendant's demurrer to the first amended complaint. However, our prior opinion was "limited to the statute of limitations ruling," and expressed "no opinion as to how the trial court should react to any second amended complaint." (*Pryor v. Nelson Shelton & Assocs., supra,* B243989, at p. *15.)

Finally on causation, plaintiff argues there was no substantial evidence supporting the court's finding that defendant terminated Nelson on September 23, 2005. Plaintiff refers to evidence the court relied on in making this finding—Elsa Nelson's deposition—but does not cite to where in the record on appeal this evidence is located. Although plaintiff cites to evidence he filed in his opposition to the motion for summary judgment and his motion for new trial, the record does not show this evidence was admitted at trial. Plaintiff has not provided

the exhibits admitted at trial in the record on appeal and has therefore not provided an adequate record from which we can review the alleged error. (See *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 ["Failure to provide an adequate record on an issue requires that the issue be resolved against plaintiff."].) In any event, we fail to see that defendant's failure to terminate Nelson, even if true, would have affected the adverse causation finding made by the trial court.

Jury trial. Plaintiff next argues that the trial court erroneously denied him a jury trial. Plaintiff acknowledges that the "court advised Plaintiff's new attorney that the previous attorney had waived the jury trial," and argues the court was mistaken. In support of this argument, plaintiff cites only to his request to waive court fees in the record on appeal. He does not cite to where in the record he made a timely demand for a jury trial. (See Code Civ. Proc., § 631, subd. (f)(4) [a party waives trial by jury by failing to announce that a jury is required].) Plaintiff has not met his burden as the appellant of establishing error.[3] (*Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277 [" ' "[A]n appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness." ' "].)

Admission of "defendant's" evidence. Lastly, plaintiff contends the trial court erred in admitting into evidence "unverifiable documents and depositions" that defendant filed, thereby violating his "right to cross-examine witnesses." As we have previously mentioned, this entire argument appears to

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[3] Plaintiff also cites extensively to case law addressing the issuance of mandamus when a jury trial is denied. As this is not a mandamus proceeding, this law is not on point.

contradict the uncontroverted fact that defendant did not appear at trial.[4] Plaintiff does not identify the documents or depositions to which he is refers, does not show that he objected to the admission of that evidence, and does not argue how he was prejudiced by its admission. (See Evid. Code, § 353; *County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 945 [" 'appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice.' "].) He has not shown error.

DISPOSITION

The judgment is affirmed.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.

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[4] In his opening brief, plaintiff claims that defendant submitted unverifiable documents and depositions, and "the court entered evidence on behalf of the defendant without any evidence being true."